

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
THE NEW YORK TIMES COMPANY,	:	
	:	
Plaintiff,	:	
	:	<b><u>COMPLAINT</u></b>
v.	:	
UNITED STATES DEPARTMENT OF ENERGY,	:	
	:	
Defendant.	:	
_____	X	

Plaintiff THE NEW YORK TIMES COMPANY (“The Times”), by and through its undersigned attorneys, alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), to obtain an order for the production of agency records from the United States Department of Energy (“DOE”) in response to a request properly made by Plaintiff.

**PARTIES**

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The Times is headquartered in this judicial district at 620 Eighth Avenue, New York, NY 10018.

3. Defendant DOE is the agency within the federal government that has possession and control of the records that Plaintiff seeks.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is premised on Plaintiff's place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

6. FOIA requires that agencies respond to FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A).

7. Defendant DOE has failed to meet the statutory deadlines set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)–(B). Plaintiff is therefore deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

### **FACTS**

8. It is well-known that Senator Joe Manchin's family owns a coal business. As part of this business, he supplies "gob," a low-grade coal dug from a mine mixed with rock and clay that can be burned to produce electricity, to power plants. *See* Christopher Flavelle & Julie Tate, *How Joe Manchin Aided Coal, and Earned Millions*, N.Y. Times (Mar. 27, 2022), <https://www.nytimes.com/2022/03/27/climate/manchin-coal-climate-conflicts.html>.

9. Senator Manchin may be "the single most important figure shaping the nation's energy and climate policy." *Id.* But although he has acknowledged that "climate change is real" and "human activities are driving much of it,"<sup>1</sup> he has regularly made clear that he does not—and will not—support legislation that would eliminate the burning of fossil fuels.

10. This seemingly contradicting stance has raised numerous questions about whether his business interests and deep, long-running relationships with the coal industry have affected his actions as a public official. *See, e.g.,* Coral Davenport, *This Powerful Democrat Linked to*

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<sup>1</sup> Lisa Murkowski & Joe Manchin, *Opinion: It's Time to Act on Climate Change—Responsibly*, Wash. Post (Mar. 8, 2019), [https://www.washingtonpost.com/opinions/lisa-murkowski-and-joe-manchin-its-time-to-act-on-climate-change--responsibly/2019/03/08/2c4025f2-41d1-11e9-922c-64d6b7840b82\\_story.html](https://www.washingtonpost.com/opinions/lisa-murkowski-and-joe-manchin-its-time-to-act-on-climate-change--responsibly/2019/03/08/2c4025f2-41d1-11e9-922c-64d6b7840b82_story.html).

*Fossil Fuels Will Craft the U.S. Climate Plan*, N.Y. Times (Oct. 18, 2021),

<https://www.nytimes.com/2021/09/19/climate/manchin-climate-biden.html>.

11. On January 25, 2022, The Times submitted a FOIA request (“the Request”) to DOE, seeking “the fuel costs paid for waste coal by the following four power plants between January 1, 2016 and December 31, 2020, for transactions listed on Energy Information Administration Form 923, under ‘Fuel Receipts and Costs’: [1] Grant Town Power Plant (Plant ID: 10151); [2] Ebensburg Power (Plant ID: 10603); [3] Seward (Plant ID: 3130); [4] John B. Rich Memorial Power Station (Plant ID: 10113).”

12. The Times also sought expedited processing, which DOE denied on February 1, 2022.

13. As of the date of this filing, DOE has not released any responsive records to The Times or otherwise informed The Times that it has made a final determination on the Request.

### **CAUSE OF ACTION**

14. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

15. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request, any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

16. Defendant has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. § 552(a)(6)(A)–(B). Accordingly, Plaintiff is deemed to have exhausted its administrative remedies under FOIA.

17. Defendant is permitted to withhold documents or parts of documents only if one of FOIA’s enumerated exemptions apply.

18. No exemptions permit the withholding of the documents sought by the Request.

19. Accordingly, Plaintiff is entitled to an order compelling Defendant to produce records responsive to the Request.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

20. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

21. Order Defendant to undertake an adequate search for the requested records and provide those records to Plaintiff within 20 business days of the Court's order;

22. Award Plaintiff the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

23. Grant Plaintiff such other and further relief as this Court deems just and proper.

Dated: New York, NY  
June 7, 2022

/s/ David E. McCraw  
David E. McCraw  
S.Y. Jessica Hui  
Legal Department  
The New York Times Company  
620 8th Avenue  
New York, NY 10018  
Phone: (212) 556-4031  
Fax: (212) 556-4634  
E-mail: mccraw@nytimes.com

*Counsel for Plaintiff*